

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 18, 2007

ROBERT HOFFMAN, JR. v. STATE OF TENNESSEE

Direct Appeal from the Circuit Court for Maury County
No. 14671 Robert L. Holloway, Jr., Judge

No. M2007-01739-CCA-R3-PC - Filed March 4, 2008

The *pro se* petitioner, Robert Hoffman, Jr., appeals the summary dismissal of his petition for post-conviction relief, arguing that his motion for reduction or correction of sentence should have tolled the one-year statute of limitations for filing the petition. Following our review, we affirm the post-conviction court's dismissal of the petition as untimely.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and D. KELLY THOMAS, JR., JJ., joined.

Robert Hoffman, Jr., Tiptonville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; and Mike Bottoms, District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

_____ On January 24, 2005, the petitioner pled guilty to five counts of incest, a Class C felony, and one count of promoting prostitution, a Class E felony, in exchange for an effective sentence of fifteen years in the Department of Correction. See Robert D. Hoffman, Jr. v. State, No. M2005-02101-CCA-R3-CD, 2006 WL 3410692, at *1 (Tenn. Crim. App. Nov. 27, 2006). He subsequently filed a *pro se* motion for correction or reduction of sentence, marked by the Maury County Circuit Court Clerk as filed on June 3, 2005, which was denied by the trial court. Id. This court affirmed the judgment of the trial court, concluding that the motion for reduction of sentence was untimely and that the petitioner would not have been entitled to relief on the merits even if the motion had been timely filed. Id. at *2.

On July 9, 2007, the petitioner filed a *pro se* petition for post-conviction relief in which he claimed that he received ineffective assistance of trial counsel and that his guilty pleas were unknowing and involuntary. On July 20, 2007, the post-conviction court entered an order summarily dismissing the petition on the basis that it was filed beyond the one-year statute of limitations. The court found that the petitioner's untimely filed motion for reduction of sentence did not toll the running of the applicable statute of limitations for filing a petition for post-conviction relief. Thereafter, the petitioner filed a timely notice of appeal to this court.

ANALYSIS

_____ The petitioner argues that his post-conviction petition was timely because his motion for reduction or correction of sentence, in which the final action was not taken by this court until November 27, 2006, tolled the one-year statute of limitations. The State argues that the motion for reduction or correction of sentence, filed more than thirty days after entry of the guilty pleas, did not prevent the petitioner's judgments from becoming final thirty days after their entry in the trial court, thereby rendering the petition for post-conviction relief, filed more than a year later, untimely. We agree with the State.

Under the Post-Conviction Procedure Act of 1995, a claim for post-conviction relief must be filed "within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final, or consideration of the petition shall be barred." Tenn. Code Ann. § 40-30-102(a) (2006).

The post-conviction statute contains a specific anti-tolling provision, stating:
The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise. Except as specifically provided in subsections (b) and (c), the right to file a petition for post-conviction relief or a motion to reopen under this chapter shall be extinguished upon the expiration of the limitations period.

Id. Subsection (b) of the statute sets forth the three narrow exceptions under which an untimely petition may be considered: (1) when the claim is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized at the time of trial and which requires retrospective application; (2) when the claim is based upon new scientific evidence establishing that the petitioner is innocent; and (3) when a previous conviction that was not a guilty plea and which was used to enhance the petitioner's sentence has been held to be invalid. Id. § 40-30-102(b).

None of the above narrow exceptions exists in this case. Moreover, the petitioner failed to allege or demonstrate the existence of any factors, such as mental incompetence during the relevant

period, under which due process considerations would require that the statute of limitations be tolled. See, e.g., State v. Nix, 40 S.W.3d 459, 464 (Tenn. 2001) (“We emphasize that to make a prima facie showing of incompetence requiring tolling of the limitations period, a post-conviction petition must include specific factual allegations that demonstrate the petitioner’s inability to manage his personal affairs or understand his legal rights and liabilities.”).

The petitioner argues that his motion for reduction or correction of sentence prevented his judgment from becoming final in the trial court. We disagree. A trial court’s judgment becomes final thirty days after its entry unless a timely notice of appeal or a specified post-trial motion is filed. See Tenn. R. App. P. 4(a), (c). Here, the petitioner did not file his motion for reduction or correction of sentence until June 3, 2005, well beyond the time in which his judgment became final in the trial court. We, therefore, agree with the State that the petition is barred by the one-year statute of limitations.

CONCLUSION

We conclude that the petition for post-conviction relief was filed outside the one-year statute of limitations and that the petitioner has not shown any facts which would require that the statute of limitations be tolled. Accordingly, we affirm the dismissal of the petition as time-barred.

ALAN E. GLENN, JUDGE